

WEBINAR WEDNESDAYS



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The Art of Charging Auto Theft Cases

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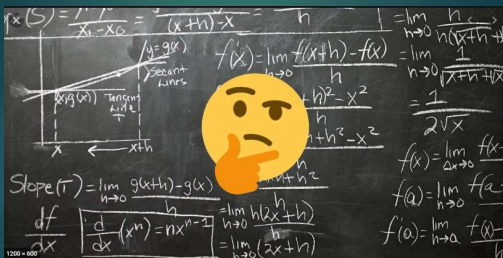
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Auto Theft Task Force Grant DCA



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THE ART OF CHARGING AUTO THEFT CASES



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AUTO THEFT STATS

- In 2018, Arizona was ranked 11th in the nation for total number of vehicles stolen.
- 19,138 vehicles were stolen in Arizona in 2018
- That resulted in \$161 million in economic loss.



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Theft of Means of Transportation ARS 13-1814

THERE ARE 5 DIFFERENT WAYS TO PROVE THEFT OF MEANS OF TRANSPORTATION; AS PROSECUTORS, WE TYPICALLY FOCUS ON JUST 2 OF THOSE SUBSECTIONS

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Common Definitions

- **Control:** means to act so as to exclude others from using their property except on Defendant's own terms (doesn't have to mean driving...)
- **Vehicle:** Trailers, boats, planes, cars, trucks (you get the idea). But NOTE: does not include devices moved by human power or used exclusively upon stationary rails or tracks (so no bikes or trains)
 - See *State v. Streck* and *State v. Blevins*

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What is a "Means of Transportation"?



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What is a "Means of Transportation"?



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ARS 13-1814(A)(1)

Defendant, without lawful authority, knowingly controlled another person's means of transportation with the intent to permanently deprive the person of the means of transportation

- ▶ Note the 'intent to permanently deprive' element: this can be tricky to prove
- ▶ Trial Hint: This is often a good sub-section to use in conjunction with Chop Shop or TSP charges

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ARS 13-1814(A)(5) – Most commonly used

Defendant controlled another person's means of transportation knowing or having reason to know that the property is stolen

- ▶ This subsection is often easier to prove; not necessary to prove that the defendant **is the one who stole** the car.
- ▶ Trial hint: don't forget the permissible inference under ARS 13-2305 that applies to this TOMOT subsection only

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Knowing, or reason to know, the vehicle is stolen.



- VISUAL INDICIA
- HOW DID THEY USE THE CAR?
- HOW DID THEY TREAT THE CAR?
- HOW/WHERE DID THEY GET THE CAR?
- GOING TO RETURN IT? WHEN? HOW?

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Jiggle Keys



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Jiggle Keys

- MANIPULATION KEY "MEANS A KEY, DEVICE OR INSTRUMENT, OTHER THAN A KEY THAT IS DESIGNED TO OPERATE A SPECIFIC LOCK, THAT CAN BE VARIABLY POSITIONED AND MANIPULATED IN A VEHICLE KEYWAY TO OPERATE A LOCK OR CYLINDER, INCLUDING A WIGGLE KEY, JIGGLE KEY OR ROCKER KEY". A.R.S. 13-1501(8)

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Jiggle Keys

- HAVE TO JIGGLE THE KEY IN THE IGNITION
- KEY MAKE DOESN'T MATCH THE CAR
- KEY DOESN'T UNLOCK DOORS OR TRUNK
- MULTIPLE JIGGLE KEYS

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ARS 13-2305 – Permissible Inferences

- ▶ 1. Proof of possession of property recently stolen, unless satisfactorily explained, may give rise to an inference that the person in possession of the property was aware of the risk that it had been stolen or in some way participated in its theft.
- ▶ 2. Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, may give rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.
- ▶ 3. Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, may give rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.
- ▶ **Very useful but be careful not to shift the State's burden on to the Defendant. *State v. Mohr*, 150 Ariz. 564 (1986)

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ARS 13-1814(A)(3) – Material Misrepresentation

Defendant knowingly obtains another person's means of transportation by means of any material misrepresentation with intent to permanently deprive the person of the means of transportation

- ▶ While there is the "intent to permanently deprive" element to this subsection, it is useful to keep this in mind when some sort of fraud had been perpetrated by the defendant – such as material misrepresentation on an application for a vehicle loan or a vehicle rental

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ARS 13-1814(A)(2) and (A)(4)

- ▶ These other 2 sub-sections are very rarely used
- ▶ (A)(2) is where the defendant converts for an unauthorized term or use the victim's means of transportation that has been entrusted to or placed in the defendant's possession for a limited, authorized term or use
- ▶ (A)(4) is where the defendant comes into control of another person's means of transportation that has been lost or misdelivered... without reasonable efforts to notify the true owner

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ARS 13-1803 – UUMOT

Without intent to permanently deprive, defendant

- 1) Knowingly takes unauthorized control over another person's means of transportation
This is a class 5 felony
- 2) Knowingly is transported or physically located in a vehicle that defendant knows or has reason to know is in the unlawful possession of another person (i.e. passenger of the stolen car)
This is a class 6 felony

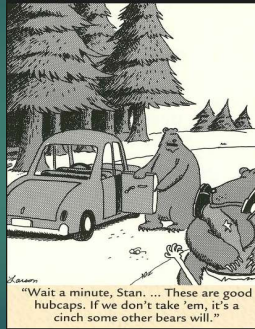
We typically use (A)(1) there is some relationship between the victim and the defendant (roommates, family members, etc.)

State v. Breed; 230 Ariz. 462 (2012); UUMOT, C5F is a lesser of TOMOT A5. UUMOT already a lesser of A1.

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CHOP SHOPS – ARS 13-4702

► <https://www.youtube.com/watch?v=36g1sZ6Cyeg>



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Definitions

- 1. "Chop shop" means any building, lot or other premises in which one or more persons alters, destroys, disassembles, dismantles, reassembles or stores at least one motor vehicle or watercraft or two or more motor vehicle or watercraft parts from at least one vehicle or watercraft that the **person or persons knows were obtained by theft, fraud or conspiracy to defraud with the intent to:**
 - (a) Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate or remove the identity of the motor vehicles or motor vehicle parts, including the vehicle identification number **for the purpose of misrepresenting or preventing the identification of the motor vehicles or motor vehicle parts.**
 - (b) Sell or dispose of the motor vehicles or motor vehicle parts.

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Definitions Continued

- 2. "Motor vehicle" means any **self-propelled vehicle.**
 - This means that Trailers are excluded!!
- 3. "Unidentifiable" means that auto theft detectives cannot establish the uniqueness of a motor vehicle or motor vehicle part.
- 4. "Vehicle identification number" means the number that the manufacturer or the United States or a state department of transportation assigns to a motor vehicle for the purpose of identifying the motor vehicle or a major component part of the motor vehicle.

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ARS 13-4702 – Conducting a Chop Shop

- ▶ A. A person shall not knowingly:
 - ▶ 1. Own or operate a chop shop – THE BIG KAUNA (Class 2 felony)

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ARS 13-4702 – Conducting a Chop Shop Cont.

- ▶ 2. Transport a motor vehicle or motor vehicle part to or from a chop shop.
- ▶ 3. Sell or transfer to or purchase or receive from a chop shop a motor vehicle or motor vehicle part.
- ▶ 4. Remove, destroy, deface or otherwise alter a vehicle identification number **with the intent to misrepresent or prevent the identification of the motor vehicle or motor vehicle part.**
- ▶ 5. Buy, sell, transfer or possess a motor vehicle or motor vehicle part **knowing that the motor vehicle identification number, which was placed on the motor vehicle or motor vehicle part by the manufacturer, has been removed, destroyed, defaced or otherwise altered.**
- ▶ *All of these are class 4 felonies*

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Difficulty with Chop Shops

- ▶ Look at the definition of "Chop Shop"
 - ▶ Must prove that the person knew the items were obtained by theft or fraud
 - ▶ Hard to do when the stolen vehicles/parts are mixed in with legit vehicles and parts
- ▶ The statute itself is poorly worded and hard to explain to anyone... let alone a jury
- ▶ Most chop shops operate under the guise of a legit car shop

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ARS 13-1806 – Failure to Return a Rental Vehicle

Defendant knowingly, without notice to and permission of **lessor**, failed to return a rented motor vehicle, within 72 hours of the date and time on which return of the property was required

- ▶ **NOTE:** this statute has built in defenses (defendant was physically incapacitated and unable to request or obtain permission to retain OR the vehicle was in such condition, through no fault of the defendant, that it could not be returned to the lessor within such time)
- ▶ Statute also requires that the contract include the date and time the property is required to be returned and the maximum penalties if it is not returned within 72 hours of that date and time

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Robbery – ARS 13-1902

- ▶ ARS 13-1902
- ▶ Aggravated Robbery – ARS 13-1903
- ▶ Armed Robbery – ARS 13-1904
 - ▶ TOMOT is a lesser included of Armed Robbery – **State v. Garcia, 235 Ariz. 627 (2014)**
 - ▶ Use "to wit" if possible to charge both TOMOT and Armed Robbery

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MVD Statutes – ARS 28-4593 and ARS 28-2531

- ▶ ARS 28-4500 deals with dealers and recyclers
- ▶ 28-4593. Altering a serial or identification number; classification
- ▶ A. A person who knowingly removes, defaces, alters or destroys a manufacturer's serial or identification number of a motor vehicle or major component part of a vehicle without the permission of the department is guilty of a **class 3 misdemeanor**.
- ▶ B. A person who intentionally removes, defaces, alters or destroys a manufacturer's serial or identification number of a motor vehicle or major component part of a vehicle with the intent to alter the identity of that or another motor vehicle or major component part is guilty of a **class 5 felony**.

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MVD Statutes Continued

- ▶ ARS 28-2001 – 28-2533 deal with personal vehicles
- ▶ 28-2531, Registration; violation; classification; exceptions
- ▶ A. A person is guilty of a **class 5 felony** who:
 - ▶ 1. Intentionally removes a manufacturer's serial or identification number from, defaces, alters or destroys a manufacturer's serial or identification number on or knowingly possesses any removed, defaced, altered or destroyed manufacturer's serial or identification number from a motor vehicle.
 - ▶ 2. Is in possession of a motor vehicle knowing or having reason to know that a manufacturer's serial or vehicle identification number has been removed, defaced, altered or destroyed without the permission of the department.
 - ▶ 3. Knowingly issues a license plate without payment of the full amount of the registration and weight fee payable on the date of issuance of the license plate.

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Additional charges common in Auto Theft cases

- ▶ Trafficking in Stolen property – ARS 13-2307
- ▶ Theft – ARS 13-1803
 - ▶ Theft of an Engine – under each of the 5 subsections of theft and is a class 4 felony
- ▶ Burglary in the 3rd Degree – ARS 13-1506
- ▶ Possession of Burglary Tools – ARS 13-1505
- ▶ Unlawful Failure to Return a Motor Vehicle Subject to a Security Interest – ARS 13-1813**
- ▶ Felony Flight – ARS 28-622.01
- ▶ Fake License Plate- ARS 25-2531 (B)
- ▶ Criminal Damage – ARS 13-1602
- ▶ Misconduct Involving Weapons – ARS 13-3102
- ▶ Fraud Schemes – ARS 13-2310
- ▶ Aggravated Assault – ARS 13-1204
- ▶ All the Drugs!

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For Questions

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